

The Civic Party Position Paper
on the Report of the study conducted by the Legal Aid Services Council's
Interest Group on Scope of Legal Aid and Expansion of the Supplementary
Legal Aid Scheme
For LegCo Panel on Administration of Justice and Legal Services
on 24 January 2011

Introduction

1. We note that the Legal Aid Services Council (the **Council**) is of the view that the types of new claims (as originally proposed by the Hong Kong Bar Association) to be covered by SLAS Part II should only be expanded on an incremental basis; starting with the less risky types of claims.
2. The Civic Party disagrees with this approach. We do not see the logic or reason behind adopting this 'ultra conservative' attitude. There is also no clear timeline given as to what constitutes "incremental". If SLAS II is to be implemented in stages, there must be a concrete timetable provided by the Administration. We are concerned with the pace of reform.
3. There is a wide range of unmet legal needs in the community touching on the lives of many. This is affecting especially those in the sandwich and middle classes. The number of unrepresented litigants in civil proceedings is self-evident and it is putting an enormous strain on the justice system. This calls for decisive action on the part of the Administration.

Claims against Developers in the Sale of New Flats

4. We are most concerned with the exclusion of this head of claims from the first phase of SLAS II. We note that members of the Interest Group have “*expressed strong concern*” in respect of claims arising from the sale of new flats, offices or shop premises. However, without any further explanation, it was recommended that this head of claims should only be considered and perhaps incrementally included at an unspecified later stage.
5. The Civic Party has received and dealt with numerous complaints from buyers of new flats. These complaints ranged from misrepresentation by the developers during the sale process to serious sub-standard new flats being handed over to buyers at completion.
6. The societal need clearly justifies the calling for more regulations and the introduction of a new legislation to cover the selling of new flats and legal disputes arising from such transactions. However, the fact that new legislation is on the horizon is not a valid reason for deferring the inclusion of this head of claims from the first phase of SLAS II. Quite the contrary, given that new legislation will be introduced to this area, it means there will be even more unmet legal needs, and SLAS II is needed in order to maximise the effects from the new legislation by providing more access to justice.
7. The recent complaints received by the Civic Party in relation to the sale of new flats in a Mid-Levels development is the latest example of legal needs in this area.
8. There should be no recoverability issues as, most if not all, developers in Hong Kong are publicly listed corporations with substantial financial resources and backing.

9. The exclusion of this head of claims from the first phase of SLAS II would only further strengthen the prevalent general public impression that this Administration is biased towards the interests of property developers.

Claims against estate agents, independent financial consultants and insurance agents

10. The insurance and recoverability issues have already been considered in detail by the Hong Kong Bar Association's Submission in July 2010. The Council did not deal with any of these submissions. Instead, it gave the vaguest and most bureaucratic justification for the exclusion of this head of claims: that only further consideration would be given once recoverability implications and their respective insurance positions have been reviewed.
11. A concrete timetable should be given and any outstanding issues on recoverability should be clearly set out by the Administration – so that they could be addressed by the relevant bodies immediately. All three types of agents/consultant are regulated by statutory bodies: the Estate Agent Authority, the Office of the Commission of Insurance¹, and the Securities and Futures Commissions. There should not be any difficulties in addressing any recoverability issues or concerns that the Administration may still have.

Claims for Sale of Goods and Provision of Services

12. It is not a valid reason for the Administration to exclude this head of claims from the first phase of SLAS II pending new legislation that would be introduced into this area. It is noted with regret that the sale of new flats by developers will not be covered by the new Trade Description Amendment Ordinance 2008.

¹ Insurance companies are all reinsured.

13. We believe that, on the contrary, given the new legislation that would soon be introduced, there will be a higher demand for access to justice in this area hence more unmet legal needs. SLAS II must be expanded to cover this area.
14. The Civic Party calls for the Consumer Council to openly express their views on this matter.

Fees and contribution

15. The Council cites reasons of higher complexity and risks as the justification for requiring higher percentages of contribution from users of SLAS II. The Civic Party is not opposed to imposing higher contribution fees if the Administration is committed to the implementation of the full scope of SLAS II as soon as possible without further delay.

Conclusion

16. The Council and the Administration must set out a clear timeline for the implementation of SLAS II. There should be an end to vague promises and non-committal positions.
17. The LegCo Panel is requested to adopt and continue to support the course of action along the lines of the Hong Kong Bar Association's Proposal of July 2010.

19 January 2011

Dennis W.H. Kwok
for and on behalf of the Civic Party